

**DECISION**

U/ 95368  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE:

DATE:

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FEB 6 1975

MATTER NO. B-167973

DIGEST:

**Anthony C. Motta - Forfeiture of accrued annual and sick leave**

Former employee of Department of the Air Force would not be entitled to payment of sick and annual leave accrued as of effective retirement date since there is no statutory authority for paying an employee for accrued sick leave. Neither would he be entitled to reimbursement of accrued annual leave under Pub. L. 93-181, since employing agency authorized by regulations to make determination of error finds no error to have been made as contemplated by 5 U.S.C. 6304 as amended.

This decision involves the reconsideration of a disallowance of a claim by Mr. Anthony C. Motta, formerly employed by the Department of the Air Force, Patrick Air Force Base, Florida, for payment for 815 hours of sick leave and 39 hours of annual leave forfeited at the time of his optional retirement on April 30, 1968.

The record shows Mr. Motta voluntarily retired under the provisions of AFSC Project 55-60, after examination by a Patrick Air Force Base hospital physician who pronounced him fit for duty. Following his separation, Mr. Motta submitted an application for disability retirement to the United States Civil Service Commission, which was approved, and his disability annuity commenced retroactively on May 1, 1968.

Mr. Motta argued that approval of his disability retirement by the Civil Service Commission constituted proof that the determination of the Patrick Air Force Base physician was erroneous. He claimed he was therefore entitled to payment for 815 hours of accrued sick leave and the 39 hours of accrued annual leave which exceeded the maximum lump sum leave payment allowable upon retirement. Our Transportation and Claims Division settlement of August 22, 1969, disallowed payment of such claim, and Comptroller General decision, B-167973, October 1969, sustained the settlement. We found no statutory authority for reimbursing an employee for sick leave not granted prior to his separation from service and no authority for restoring an employee to the rolls of the former employing agency for the sole purpose of granting such leave, in the absence of a bona fide error or a violation of a valid regulation in effecting the separation.

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Mr. Motta's request for reconsideration is based on enactment of Public Law 93-181. Since Mr. Motta is not entitled to payment of accrued sick leave to his credit at the time of his retirement on May 1, 1968, it would appear that section 5 of Public Law 93-181, approved December 14, 1973, amending 5 U.S.C. 6304, would be applicable only to his claim for accrued annual leave. Section 5 provides as follows:

"Sec. 5. With respect to a former employee (except a former employee under section 6 of this Act) who is not on the rolls on the date of enactment of this Act, annual leave which accrued after June 30, 1960, but, because of administrative error, was lost by operation of section 6304 of title 5, United States Code, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within three years immediately following the date of enactment of this Act, with the agency by which he was employed when the lump-sum payment provisions of section 5551 of title 5, United States Code, last became applicable to him. Payment shall be by that agency at the salary rate in effect on the date the lump-sum payment provisions became applicable."

The section cited above provides continuing authority to provide payment to former employees who forfeited annual leave because of an administrative error when the error is not discovered until after separation. Regulations and instructions implementing the above statute appear in an attachment to Federal Personnel Manual Letter No. 630-22, January 11, 1974, issued by the Civil Service Commission.

Under the implementing regulations and instructions found in Federal Personnel Manual Letter No. 630-22, January 11, 1974, the determination of whether an administrative error has occurred, justifying compensation for leave lost through such error is primarily within the discretion of the agency involved. The Department of the Air Force has determined that the forfeiture of annual leave was not caused by an administrative error. The only issue between Mr. Motta and his agency was whether his retirement was voluntary or caused by a disability, but there is nothing in the record to indicate that but for the alleged administrative error, he would not have retired at all but would have remained on the rolls to use his leave. Regardless of the nature of his retirement, Mr. Motta is not entitled to exceed his leave ceiling. Therefore, we have no basis to find that the agency's determination was clearly erroneous on the record.

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In view of the above, the disallowance of Mr. Motta's claim is sustained.

Comptroller General  
of the United States